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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Corinne Berdugo, Plaintiff, v. Persolve, LLC d/b/a Account Resolution Associates, Defendant.	**Case No:** '15CV2350 W KSC **Complaint For Damages** **Jury Trial Demanded**

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.

3. Corinne Berdugo, ("Plaintiff" or "Berdugo"), through Plaintiff's attorneys, brings this action to challenge the actions of Persolve, LLC d/b/a Account Resolution Associates, ("Defendant" or " Persolve"), with regard to attempts by Defendant to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

4. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, which Plaintiff alleges on personal knowledge.

5. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

6. Unless otherwise stated, all the conduct engaged in by Defendant took place in California.

7. Any violations by Defendant were knowing, willful, and intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such specific violation.

8. Through this complaint, Plaintiff does not allege that any state court judgment was entered against Plaintiff in error, and Plaintiff does not seek to reverse or modify any judgment of any state court.

JURISDICTION AND VENUE

9. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

10. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").

11. Plaintiff is a natural person who resides in the City of San Diego, County of San Diego, State of California.

12. Plaintiff resides in San Diego County, as defined by 28 U.S.C. § 1391c(1), the judicial district in which this lawsuit is brought.

13. Defendant regularly attempts to collect alleged debts against consumers in San Diego County by sending letters and making phone calls to consumers, as Defendant did to Plaintiff as well.

14. Specifically, Defendant sent a letter to Plaintiff in an attempt to collect on an alleged debt, which failed to comply with federal and state laws.

15. This collection effort towards Plaintiff by Defendant in the County of San Diego is the action that gave rise to the claim alleged and therefore venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1391(b)(2).

16. Because a substantial part of the events or omissions giving rise to the claim occurred in San Diego County, venue is proper pursuant to 28 U.S.C. § 1391b(2).

17. At all times relevant, Defendant conducted business within the State of California.

18. Because Defendants do business within the State of California, personal jurisdiction is established.

PARTIES

19. Plaintiff Berdugo is a natural person who resides in the City of San Diego, State of California.

20. Defendant Persovle is located in the City of Northridge, in the State of California.

21. Plaintiff is a natural person allegedly obligated to pay a debt, and is a consumer, as that term is defined by 15 U.S.C. § 1692a(3).

22. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

23. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a debtor as that term is defined by California Civil Code § 1788.2(h).

24. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

25. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

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FACTUAL ALLEGATIONS

26. Sometime before September 17, 2013, Berdugo is alleged to have incurred certain financial obligations.
27. These financial obligations were primarily for personal, family or household purposes and are therefore a "debt" as that term is defined by 15 U.S.C. §1692a(5).
28. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a "debt" as that term is defined by California Civil Code §1788.2(d), and a "consumer debt" as that term is defined by California Civil Code §1788.2(f).
29. Sometime thereafter, but before September 17, 2013, Berdugo allegedly fell behind in the payments allegedly owed on the alleged debt. As it is irrelevant to this action, Berdugo currently takes no position as to the validity of this alleged debt.
30. Subsequently, but before September 17, 2013, the alleged debt was assigned, placed, or otherwise transferred, to Persolve for collection.
31. Subsequently, on September 17, 2013 Persolve filed a state court action against Berdugo to collect on this alleged debt.
32. Thereafter, Persovle obtained a default judgment against Berdugo on May 15, 2015.
33. Subsequently, on or about August 12, 2015, Persolve mailed a dunning letter to Berdugo. A few days later, Berdugo received that letter.
34. This communication to Berdugo was a "communication" as that term is defined by 15 U.S.C. § 1692a(2).
35. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b) defines that phrase.

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36. This August 12, 2015 letter stated the following:

WARNING: EXECUTION PENDING

Dear Mr./Ms. CORINNE BERDUGO:

On May 15, 2015, a Judgment in the amount of $20,309.98 was entered against you.

Please be advised that we are preparing to execute on the Judgment we have against you. ***This includes execution upon you and/or your spouse's nonexempt assets, such as, your personal and/or business bank accounts and motor vehicles.*** Further, in certain cases if the balance of this Judgment is appropriate and you have adequate equity in your home or other property you own but fail to pay this Judgment, we may be compelled to force a sale of your property. Moreover, if ***you or your spouse owns a business***, we may do a till tap or place a keeper in your location and collect all monies located in either your cash register, or that arrives in the mail. Lastly, we may have ***you and/or your spouse appear*** in court for a Judgment Debtor Examination where you will be required to attend a hearing under the jurisdiction of the Court in order to answer questions, and ***you and/or your spouse*** will be required to disclose and provide all of your financial information and documentation under the jurisdiction of the Court.

Therefore, in order to avoid out· attempts to execute on this Judgment, you must ***immediately*** remit the balance listed above or call now if you need additional time.

If you would like to choose to make voluntary arrangements, please contact our post-judgment collection department immediately at (866) 438-1259 to discuss your options.

(emphasis added)

37. While, California Family Code § 910 permits a judgment creditor to pursue community property held by a judgment debtor's spouse, the creditor cannot pursue the judgment debtor's spouse's separate property.
38. Defendant fails to explain the distinction between separate property and community property, thereby leading the least sophisticated consumer to believe that all property held by judgment debtor's spouse is at risk, whether or not it is community property.
39. Through this conduct, Defendant used false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer. Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).
40. Through this conduct, Defendant used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendant violated 15 U.S.C. § 1692f.
41. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.
42. By failing to inform the consumer of the restrictions, Defendant threatened to take separate property from the judgment debtor's spouse.
43. Through this conduct, Defendant threatened to take action that cannot legally be taken or that is not intended to be taken. Consequently, Defendant violated 15 U.S.C. § 1692e(5).
44. Through this conduct, Defendant used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendant violated 15 U.S.C. § 1692f.
45. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal

Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

46. Further, this letter required the judgment debtor to take action "immediately" or suffer the consequences as laid out.

47. As of October 1, 2015, Plaintiff has not communicated with Defendant to resolve this debt or made any payments, and Defendant has failed to take any action as threatened.

48. Through this conduct, Defendant threatened to take action that cannot legally be taken or that is not intended to be taken. Consequently, Defendant violated 15 U.S.C. § 1692e(5).

49. Through this conduct, Defendant used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendant violated 15 U.S.C. § 1692f.

50. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

CAUSES OF ACTION

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

51. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

52. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

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53. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

54. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

55. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

56. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to $1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of statutory damages of $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of statutory damages of $1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);

- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

57. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

Hyde & Swigart

Date: October 13, 2015

By: /s/Jessica R. K. Dorman
Jessica R. K. Dorman
Attorneys for Plaintiff